

## § 1040.111

(7) The time limits listed in paragraphs (c)(1) through (c)(6) of this section shall be appropriately adjusted where DOE requests another Federal agency to act on the complaint. DOE is to monitor the progress of the matter through liaison with the other agency. Where the request to act does not result in timely resolution of the matter, DOE is to institute appropriate proceedings as required by this part.

(d) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws implemented in this part or because the complainant has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subpart. The identity of complainants is to be kept confidential except as determined by the Director, FAPD, to be necessary to carry out the purpose of this subpart, including investigations, hearings, or judicial proceedings arising thereunder.

### Subpart H—Enforcement

#### MEANS OF EFFECTING COMPLIANCE

##### § 1040.111 Means available.

If there appears to be a failure or threatened failure to comply with any of the provisions of this part, and if the noncompliance or threatened noncompliance cannot be corrected by voluntary means, compliance with this part may be effected by the suspension, termination of, or refusal to grant or to continue Federal financial assistance, or by any other means authorized by law. Such other means may include, but are not limited to:

(a) Referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law including the Civil Rights Act of 1964, other statutes to which this part applies, or any assurance or other contractual undertaking; and

(b) Any applicable proceeding under State or local law.

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##### § 1040.112 Noncompliance with assurances.

If an applicant fails or refuses to furnish an assurance required under § 1040.4 of subpart A of this part, or otherwise fails or refuses to comply with a requirement imposed by this part, such as § 1040.102(c), subpart G of this part, action to refuse Federal financial assistance shall be taken in accordance with procedures of § 1040.114 of this subpart.

##### § 1040.113 Deferral.

DOE may defer action on pending applications for assistance in such a case during pendency of administrative proceedings under § 1040.114 of this subpart.

##### § 1040.114 Termination of or refusal to grant or to continue Federal financial assistance.

No order suspending, terminating, or refusing to grant or continue Federal financial assistance is to become effective until:

(a) Informational notice of the proposed order is given to the Executive Assistant to the Secretary, if the action is contemplated against a State or local government;

(b) The Director has advised the applicant or recipient of his/her failure to comply and has determined that compliance cannot be secured by voluntary means. (It will be determined by the Director that compliance cannot be secured by voluntary means if it has not been secured within the time periods specifically set forth by this part.)

(c) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with the requirement imposed by or under this part;

(d) The FERC has notified the Secretary of its finding of noncompliance; and

(e) The expiration of 30 days after the Secretary or a designee has filed with the committee of the House of Representatives and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend, terminate, or to refuse to grant or to continue Federal financial

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assistance is to be limited to the particular political entity or part of that entity or other applicant or recipient to whom the finding has been made and shall be limited in its effect to the particular program or part of the program in which the noncompliance has been found.

### § 1040.115 Other means authorized by law.

No action to effect compliance by any other means authorized by law is to be taken until—

(a) The Director has determined that compliance cannot be secured by voluntary means;

(b) The recipient or other person has been notified by the Director, in writing, that it has been found in formal noncompliance and that it has 10 days before formal enforcement proceedings begin in which to enter into a written voluntary compliance agreement.

(c) The expiration of at least ten (10) days from the mailing of the notice to the recipient or other person.

### OPPORTUNITY FOR HEARING

### § 1040.121 Notice of opportunity for hearing.

(a) Whenever an opportunity for hearing is required by § 1040.113, the Director, OEO, or his/her designee shall serve on the applicant or recipient, by registered, certified mail, or return receipt requested, a notice of opportunity for hearing which will:

(1) Inform the applicant or recipient of the action proposed to be taken and of his/her right within twenty (20) days of the date of the notice of opportunity for hearing, or another period which may be specified in the notice, to request a hearing;

(2) Set forth the alleged item or items of noncompliance with this part;

(3) Specify the issues;

(4) State that compliance with this part may be effected by an order providing for the termination of or refusal to grant or to continue assistance, as appropriate, under the program involved; and

(5) Provide that the applicant or recipient may file a written answer with the Director, OEO, to the notice of opportunity for hearing under oath or af-

firmation within twenty (20) days of its date, or another period which may be specified in the notice.

(b) An applicant or recipient may file an answer, and waive or fail to request a hearing, without waiving the requirement for findings of fact and conclusions of law or the right to seek review by the FERC in accordance with the provisions established by the FERC. At the time an answer is filed, the applicant or recipient may also submit written information or argument for the record if he/she does not request a hearing.

(c) An answer or stipulation may consent to the entry of an order in substantially the form set forth in the notice of opportunity for hearing. The order may be entered by the General Counsel or his/her designee. The consent of the applicant or recipient to the entry of an order shall constitute a waiver by him/her of a right to:

(1) A hearing under Sec. 902 of title IX of the Education Amendments of 1972, Section 602 of title VI of the Civil Rights Act of 1964, Section 16, Section 401 and § 1040.113;

(2) Findings of fact and conclusions of law; and

(3) Seek review by the FERC.

(d) The failure of an applicant or recipient to file an answer within the period prescribed or, if the applicant or recipient requests a hearing, his failure to appear at the hearing shall constitute a waiver by him/her of a right to:

(1) A hearing under Section 902 of title IX of the Education Amendments of 1972, Section 602 of title VI of the Civil Rights Act of 1964, Section 16, Section 401, and § 1040.113;

(2) Conclusions of law; and

(3) Seek review by the FERC.

In the event of such a waiver, the Secretary or a designee may find the facts on the basis of the record available and enter an order in substantially the form set forth in the notice of opportunity for hearing.

(e) An order entered in accordance with paragraph (c) or (d) of this section shall constitute the final decision of DOE unless the FERC, within forty-five (45) days after entry of the order, issues a subsequent decision which